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IN THE

Supreme Court of the United States

OCTOBER TERM, 1941.

No. 100

ILLINOIS NATURAL GAS COMPANY,
Appellant,

vs.

CENTRAL ILLINOIS PUBLIC SERVICE COMPANY AND ILLINOIS COMMERCE COMMISSION,
Appellees.

APPEAL FROM THE SUPREME COURT OF THE STATE OF ILLINOIS.

BRIEF FOR APPELLEES.

GEORGE F. BARRETT,
Attorney General of the State of Illinois, Counsel for Illinois Commerce Commission, an Appellee,

A. D. STEVENS,
GRAY HERNDON,
ELMER NAFZIGER,
Counsel for Central Illinois Public Service Company, an Appellee.

ALBERT E. HALLETT,
Assistant Attorney General, of Counsel.

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APPEAL FROM THE SUPREME COURT OF THE STATE OF ILLINOIS.

BRIEF FOR APPELLEES.

STATEMENT.

Origin of These Proceedings.

These proceedings originated by a petition filed with the Illinois Commerce Commission on May 22, 1939, by the Central Illinois Public Service Company. The petitioner sought to obtain from the Illinois Natural Gas Company a supply of natural gas delivered at or near the City of Mattoon, adequate to supply petitioner's needs as a public utility serving the cities of Mattoon, Effingham, Charleston, Paris and intermediate communities.

The Illinois Natural Gas Company answered, refusing to

furnish the service and as reason for the refusal set up the following grounds:

1. It is the wholly owned subsidiary of Panhandle Eastern Pipe Line Company, a Delaware corporation.

2. It is engaged in interstate commerce and therefore exempt (except in so far as it voluntarily submits itself thereto) from State regulation.

3. That since June 21, 1938, it has been subject to the sole and exclusive jurisdiction of the Federal Power Commission under the provisions of the Natural Gas Act.

Hearings were held by the Illinois Commerce Commission at which both parties introduced testimony, none of which was contradicted or impeached.

On November 30, 1939, the Illinois Commerce Commission ordered and authorized the Illinois Natural Gas Company to make a connection with Central Illinois Public Service Company's mains at or near the city of Mattoon, and to furnish the last named company with natural gas sufficient in quantity to supply the needs of the above named cities and intermediate communities under the rates, rules, regulations and conditions of service which the Illinois Natural Gas Company then had, or might thereafter have, on file with and approved by the Commission.

The Interested and Affected Parties.

(1) Central Illinois Public Service Company (hereafter called "Appellee Company"), which is incorporated under the laws of the State of Illinois, and holds certificates of Public Convenience and Necessity issued by the Illinois Commerce Commission to conduct a gas utility business in the above named cities and intermediate communities.

(2) Illinois Natural Gas Company (hereafter called "Appellant"), which is also incorporated under the laws of the State of Illinois and operates as a public utility un-

der certificates of Public Convenience and Necessity issued by the Illinois Commerce Commission.

(3) Panhandle Eastern Pipe Line Company (hereafter called "Panhandle Eastern"), a Delaware corporation, which is the parent company of Appellant, and owns the high pressure transmission line extending across Illinois from which Appellant receives its gas.

(4) The citizens of Mattoon, Effingham, Charleston and Paris and intermediate communities in which Central Illinois Public Service Company serves over 5,000 natural gas customers.

The Issue.

Does the Illinois Commerce Commission have authority to require the Illinois Natural Gas Company (Appellant) to construct a pipe line and sell gas to the Central Illinois Public Service Company (Appellee Company)?

Facts of Record.

Appellee Company has supplied gas in Mattoon, Charleston and Paris for more than twenty-five years (R. p. 34). Originally this was artificial gas manufactured at local plants in those cities, but in 1927, to obtain the economies of quantity manufacture in a centralized plant, Appellee Company installed a four-inch main from its Mattoon plant to Charleston and thence the year following to Paris, a total distance of forty miles (R. pp. 36 and 48). In 1929 Appellee Company began obtaining a portion of its artificial gas from the Indiana Consumers Gas and By-Products Company, delivered at the State line by that company through a main owned by it extending from its Terre Haute, Indiana, plant to a point on the State line east of Paris. The following year Appellee Company began serving artificial gas in Effingham, installing a four-inch main

from its Mattoon plant to Effingham for that purpose (R. p. 36).

Appellee Company continued to supply artificial gas to the four cities until August, 1932, when it changed to natural gas procured from the same Indiana Company, and transmitted as the artificial gas had been previously. Approval by the Illinois Commerce Commission of the contract under which this natural gas was obtained was sought by Appellee Company and the cause was heard by the Commission on July 19, 1932, but no order was entered until June 18, 1936, when the Commission refused to approve the contract because of its provisions for heating value and cost, calling attention to the proximity of the natural gas transmission main of the Panhandle Illinois Pipe Line Company (predecessor in ownership of Appellant), and directing Appellee Company to submit such a plan as would adequately provide for Appellee Company's requirements in the above cities (R. pp. 73, 74).

Appellee Company thereupon instituted proceedings before the said Commission with a view to obtaining natural gas from the Panhandle Illinois Pipe Line Company (Appellant's predecessor), but these proceedings were halted by a suit brought in the Federal Court by the Universal Gas Company (successor to Indiana Consumers Gas and By-Products Company) to enjoin Appellee Company from ceasing to receive natural gas from it, and to enjoin the Panhandle Illinois Company from furnishing Appellee Company with natural gas. A decision affirming a lower court judgment holding the contract invalid was rendered by the United States Circuit Court of Appeals for the Seventh District (*Universal Gas Company* v. *Central Illinois Public Service Company and Illinois Natural Gas Company*, 102 Fed. (2) 164), and, upon expiration of period for certiorari, negotiations were begun by Appellee Company with Appellant.

Appellant is the successor in ownership to a portion of the property in Illinois formerly owned by the Panhandle Illinois Pipe Line Company, beforementioned. Like Appellant, the latter was a subsidiary of Panhandle Eastern. On February 23, 1938, it owned and operated all of the property located in Illinois which is now owned and operated by the Panhandle Eastern, and all of the property located in Illinois now owned and operated by Appellant (except subsequent additions in both cases). This Panhandle Illinois Company had for some years prior to that date carried on all operations and transacted all business in Illinois concerning the gas brought to the State line by Panhandle Eastern, including both its transmission across the State of Illinois and the business of supplying gas to all customers in Illinois (R. p. 89). On that date the Panhandle Illinois Pipe Line Company joined with the Appellant in a petition to the Illinois Commerce Commission for an order authorizing the carrying out of a three-party contract providing for the transfer by it of its large transmission main extending across the State and all boosting and other equipment incidental to that main to the Panhandle Eastern; and the transfer to Appellant of all of its remaining property and assets, including all laterals leading from the large main and their incidental equipment and the entire business of supplying natural gas in Illinois (R. pp. 88-107).

In the opening statement made to the Commission in that proceeding by Counsel representing both petitioners (also at the time Counsel for Panhandle Eastern), the purpose of the proceeding was represented to the Commission to be "the separation of the property and business of Panhandle Illinois Pipe Line Company to the end that the property and business which is purely intrastate and of a local utility character, will be owned and operated by the Illinois Natural Gas Company, an Illinois corporation, op-

erated as a public utility in this state, and that the main line and compressor stations not used, useful or necessary in the conduct of a public utility business be transferred to the Panhandle Eastern Pipe Line Company, a Delaware corporation" (R. pp. 15 and 16.)

In that same proceeding Appellant sought an order from the Commission approving a contract between Appellant and Panhandle Eastern for the furnishing by Panhandle Eastern to Appellant of all gas required by Appellant for resale by Appellant to the several distributing companies then, or thereafter to be, served by it.

An order permitting the transfer and approving the contract was entered by the Commission on June 15, 1938 (R. pp. 47, 58) and thereupon the actions authorized by the order were taken and Appellant filed with the Commission its rates, regulations and conditions of service, all of which have been thenceforth adhered to by Appellant (except in the instance here before the Court), and with all of which Appellant admits the Appellee Company will comply in obtaining the service here sought. The installation of the approximately twenty miles of lateral required to serve Appellee Company admittedly is within the service Appellant holds itself out to perform, and the remuneration to be received by it admittedly is compensatory.

The contract between Appellant and Panhandle Eastern is for a period of five years ending June, 1943 and thereafter until canceled on twelve months' written notice (R. pp. 75, 76). It is a formal written instrument, containing sixteen Articles. With certain exceptions as to Industrial customers, and except for *force majeure*, it unqualifiedly binds Panhandle Eastern to supply all Appellant's requirements, even to the extent of itself purchasing from others to do so (R. p. 76). It specifies in detail the quality of the gas, permitting Panhandle Eastern to extract certain hydro-carbons; specifies the per cubic foot thermo-units,

with fixed temperature and pressure for their ascertainment; and fixes limits to impurity and moisture content, and prescribes exact methods for their ascertainment (R. pp. 77, 78).

It also provides in detail for the measurement of the gas, fixing the barometric pressure, the method of obtaining temperature and the specific gravity of the gas for measurement by meters (R. pp. 78, 79). It provides for the installing, reading, cleaning, changing, repairing, inspecting and adjusting of measuring equipment, for freedom thereof from outside influences, gives either party the right to install check meters, fixes percentages of inaccuracy tolerance, provides for monthly testing, outlines the method of estimating the quantity of gas delivered through inaccurate meters, requires the daily reading of meters where practicable and fixes the hour of the day for such readings and provides that all records shall be kept for a period of five years (R. pp. 80, 81, 82). Days of the month are specified for rendering bills and for making payment, and provision made for the correction of possible errors. Places of delivery are expressly stated to be the points of connection between the respective facilities of the two parties (R. pp. 82, 83).

Although Panhandle Eastern transmits the gas in its main at pressures varying from a maximum of 450 pounds to a minimum of 225 to 250 pounds per square inch (R. p. 29), the contract requires Panhandle Eastern to deliver to Appellant at a pressure not to exceed 200 pounds (R. p. 85), Panhandle Eastern warrants the title to all gas delivered to Appellant, and agrees to indemnify Appellant from all damages through failure of such warranty (R. pp. 85, 86).

The contract further provides that upon delivery the Appellant "shall be deemed to be in exclusive control and possession" of the gas and "responsible for any injury or damage caused thereby," and each party agrees to "indemnify and save harmless the other" from all damages

beyond point of delivery (R. p. 85). It prohibits modification of its terms except by subsequent written contract, prevents a waiver of non-performance from constituting a waiver of like future non-performance, and "supersedes and cancels all previous contracts, agreements and understandings between the parties hereto covering the sale and delivery of gas by" Panhandle Eastern "to" Appellant or Appellant's predecessor (R. p. 87). The record contains no evidence of any modifications of the contract's original terms or provisions.

An employee of Panhandle Eastern stationed at Kansas City estimates from day to day from weather reports and reports from Panhandle Eastern's customers the daily volume required to be put into its main at the producing field, and this information is dispatched daily to the field and there used in the regulation of the flow from wells (R. pp. 31, 32).

All gas handled by Appellant is obtained from Panhandle Eastern at the points of delivery specified in the contract (R. p. 27). All of Appellant's facilities, and all of Appellant's business subsequent to the delivery of the gas by Panhandle Eastern to Appellant, are within the State of Illinois (R. p. 28). All sales of gas made by Appellant are made in Illinois and are in accordance with its schedules and rates filed with the Illinois Commerce Commission (R. pp. 2-14). Appellant supplies Appellee Company with gas under these schedules and rates at four other points in the State of Illinois (R. p. 40). All movement of the gas beyond the point of its delivery to Appellant is caused by what remains of the pressure in Panhandle Eastern's main, Appellant, upon receipt of the gas, reducing the pressure at point of delivery (R. p. 22) to what it deems most economical for transmission to its customers, varying at the different points of delivery from 38 pounds to 173 pounds per square inch (R. p. 44).

Appellant delivers the gas to its distributing company

customers at pressures ranging from 15 to 90 pounds per square inch, and the average pressure at which such customers distribute the gas in turn to their customers is 3.47 ounces per square inch (R. pp. 44, 47).

While Appellee Company's four-inch main between Mattoon and Paris was adequate for the transmission from Paris of all artificial gas required at Charleston, Mattoon and Effingham and intermediate communities, the advent of natural gas with its resulting house heating and industrial uses caused such an increase in the requirements for that group that the line has become inadequate (R. p. 37). It will continue for many years to be of sufficient capacity to meet the needs of Charleston and Paris with gas transmitted from Mattoon, but because of Mattoon's greater requirements is already inadequate for that city and Effingham (R. p. 37). This main was installed in 1927, designed to carry not over 100 pounds pressure which was considered high for gas mains at that time. Its maximum pressure for day to day operation should not be over 150 pounds, with occasional maximum pressure of not over 200 pounds, and even at the higher pressure it cannot supply Appellee Company's requirements.

To meet the requirements at Mattoon, Charleston and Effingham with gas transmitted from Paris would necessitate the installation and operation of an additional four-inch main at a cost of over $250,000, besides which Appellee Company would annually incur maintenance, depreciation and other operating charges and expenses (R. p. 37). Also, the gas procured from Appellant would have a higher B. T. U. content and will be furnished at lower rates, which, based on 1938 sales, would enable Appellee Company to furnish gas to its customers in the Mattoon group at a saving to them of approximately $12,000 a year (R. pp. 46, 47). It is, however, estimated that the sales in the Mattoon group for 1938 would have been increased by 20 to 25 per

cent had adequate supply of natural gas been available for Mattoon, Charleston and Effingham (R. p. 37).

The Illinois Commission found Appellant's business subsequent to its purchase and receipt of the gas to be intrastate (R. p. 56), and ordered Appellant to make necessary installations and render the proposed service and that a Certificate of Convenience and Necessity be issued to Appellant for those purposes (R. pp. 57, 58). Application for rehearing by the Commission was made by Appellant and denied, and Appellant appealed to the Circuit Court of Coles County, which upheld the Commission's order. Further appeal was then prosecuted by Appellant to the Supreme Court of the State of Illinois, which affirmed the judgment below. Appellant then prosecuted the present appeal to this Court.

SUMMARY OF ARGUMENT.

I. In so far as is material to the decision of this case, appellant's activities are purely local in character and do not constitute interstate commerce.

(a) The series of transactions by which natural gas is produced in one State, transported to a local company in another, and by it there resold is not to be treated as one indivisible entirety but must be broken down into its component parts and the character of such parts separately determined.

(b) The interstate character of such transmission terminates upon the delivery of the gas to the Appellant in the State of Illinois, and Appellant's subsequent activities, in reselling and delivering such gas to its customers wholly within this State, are purely local in character.

The actual facts in this case are such that appellant's activities are and were intended to be strictly local in character and entirely separate and distinct from the interstate activities of its parent, the Panhandle Eastern Pipe Line Company.

Not only the previous holdings of this Court but the background and express language of the Natural Gas Act, upon which Appellant relies heavily, sustain the above proposition.

(c) The cases relied upon by Appellant are each distinguishable upon their facts; and, although some of the *dicta* seized upon by Appellant appear to give color to its position at first blush, the actual *holdings* and general tenor of the cases sustain Appellees' position.

II. The Illinois Commerce Commission, under the Illinois statute, has jurisdiction over Appellant's activities.

III. The order in question is not repugnant to or in conflict with the Commerce Clause of the Federal Constitution.

Appellant's contentions to the contrary are predicated upon an assumption that its activities, subsequent to its receipt of the gas, are interstate and not intrastate in character. This premise being false, the Appellant's contentions fall.

IV. The order in question is not repugnant to or in conflict with the Natural Gas Act and is entirely consistent with its provisions.

Appellant's argument is based on the assumption that its activities, after receiving the gas, are interstate in character. This being untrue, the argument collapses.

Furthermore, the Natural Gas Act, which vests in the Federal Power Commission control only over such companies as transport natural gas across State lines, provides that the several States shall continue to regulate the local resale and distribution of gas within their respective borders, and sets up extensive provisions looking forward to continued activity on the part of both State and Federal Commissions in this field, each voluntarily co-operating with the others.

It therefore is clear, on the basis of the applicable decisions of this Court and the provisions of the said statute, that the order in question is not repugnant to or in conflict with the Natural Gas Act.

In addition to the purely legal aspects of the problem, it is submitted that the interests of the Nation will best be served by Federal control of such interstate activities as are here carried on by the Panhandle Eastern Pipe Line Company and State control of such local activities as are here carried on by the Appellant, Illinois Natural Gas Company.

ARGUMENT.

I.

Insofar as Is Material to the Decision of This Case, Appellant's Activities Are Purely Local in Character and Do Not Constitute Interstate Commerce.

(a)

The Series of Transactions by Which Natural Gas Is Produced in One State, Transported to a Local Company in Another, and by It There Resold Is Not to Be Treated as One Indivisible Entirety, But Must Be Broken Down Into Its Component Parts and the Character of Such Parts Separately Determined.

The proceedings before the Illinois Commerce Commission here in question in no way sought to invoke, nor was there exercised or attempted to be exercised by the Commission, any jurisdiction over the gas here in question, or over Appellant in any of its operations, transactions or dealings with respect to the gas, until the gas has been received by Appellant in Appellant's laterals at the laterals' connections with Panhandle Eastern's main. The jurisdiction which the Commission exercised in this proceeding is limited to, and only includes, what occurs after the gas has been received by Appellant from Panhandle Eastern at the intake points of Appellant's laterals.

While not expressly so stated, it seems to us evident that the argument advanced by Appellant is based fundamentally upon an assumption that, in determining whether the specific operations and transactions of Appellant which are involved in this proceeding are inter- or intra- state, all of Appellant's operations and transactions, including its purchase, its receipt, its subsequent treatment and its disposal of the gas in question, must be treated as one

single indivisible business entirety, the component parts of which are not permitted to be segregated and considered separately in order to determine in which class, inter- or intra- state, a particular operation or transaction, or series of them, properly belongs; and that therefore, because, prior to the receipt of the gas by Appellant in Illinois, the gas had moved in interstate commerce, all transactions subsequent to the receipt of such gas must also be interstate.

In passing upon questions involving the inter- or intrastate character of gas transported across State lines, this Court has repeatedly, and we believe universally, recognized that the bringing of gas into a State and there disposing of it, all under continuous pressure, may involve operations and transactions of which some are interstate in character while others are intrastate, and in each such instance has determined the inter- or intra- state character of individual component operations and transactions, or series, as separate and independent questions, from the facts surrounding the particular operation or transaction, or series, in question.

Appellees do not at all question the propriety of giving full consideration to all dealings and transactions had by or between Appellant and Panhandle Eastern relative to Appellant's procurement of the gas or relative to its collection, treatment and transmission prior to its being received by Appellant at the intake points of its laterals insofar as those facts may have bearing, if any, in determining whether Appellant's dealings and transactions with respect to the gas subsequent to receiving it constitute inter- or intra- state commerce. Appellees do, however, contend that the inter- or intra- state character of what occurs after Appellant has received the gas is an independent question for independent determination in and of itself, such determination to be arrived at from a consideration of all the facts.

In the case of *Public Utilities Commission* v. *Landon*, 249 U. S. 236, 63 L. ed. 577, 585, 586 (1918), the Receivers of the Kansas Natural Gas Company were bringing gas from Kansas into Missouri and selling it to local Missouri distributing utilities who in turn sold it to Missouri customers, the Receivers receiving in payment a percentage of the distributing companies' revenues. The Missouri Commission claimed jurisdiction to fix the rates which the local companies should both pay and charge for the gas, and on final appeal to this Court it was held that while the dealings and transactions concerning the gas prior to its being received by the distributing companies were interstate, the dealings and transactions concerning it subsequent to such receipt w e intrastate and subject to the State Commission's jurisdiction. This Court in its opinion noted the existence of permanent connections permitting the gas from the Receivers' mains to pass into the mains of the local utilities, from which, in the light of common knowledge, it may we believe be reasonably inferred that the gas travelled continuously under pressure supplied from without the State to the customers of the distributing utilities. Thus, transactions with respect to the same gas, moving continuously from without, to and within the State, were distinguished and considered separately by the Court, and an interstate character found to exist as to one set of transactions, while an intrastate character was determined as to another.

In the case of *Missouri, ex rel. Barrett* v. *Kansas Natural Gas Company*, 265 U. S. 298, 68 L. ed. 1027 (1924), this Court, speaking of gas transmitted in continuous flow from without the State to points of its ultimate consumption within the State, used the following language (loc. p. 1030):

> "With the delivery of the gas to the distributing companies, however, the interstate movement ends.

> Its subsequent sale and delivery by these companies to their customers at retail is intrastate business and subject to State regulation."

In the case of *East Ohio Gas Company* v. *Tax Commission*, 283 U. S. 465, 75 L. ed. 1171 (1931) the East Ohio Company operated local distributing utilities in various communities in Ohio. The gas originated in West Virginia and Pennsylvania and was transmitted by companies in those States to the State line where it passed without interruption into East Ohio's continuations of the transmitting mains and was hence transmitted by East Ohio to East Ohio's distributing systems in various communities. Ownership and possession of the gas thus remained in East Ohio from the State line until it reached the consumers. This Court there held that the transmission of the gas from the wells in West Virginia and Pennsylvania to the ultimate consumers in Ohio need not be treated as one single transaction but could be divided and part held interstate and the rest intrastate. So viewed it upheld a state tax.

In *Southern Natural Gas Corporation* v. *Alabama*, 301 U. S. 148, 81 L. ed. 970 (1936), the Southern Company brought gas from Louisiana and Mississippi into Alabama by continuous pipe line transmission under gas well pressure and sold it in Alabama. The State of Alabama assessed a tax upon the company based on so much of its capital as was employed in that State. This Court, in upholding the tax, divided the transmission of the gas, concluded that at least part of the transmission was intrastate in character and, at page 155, said:

> "While the gas which appellant sold was brought into the State from Louisiana, it appears that appellant carried on in Alabama activities of an intrastate character."

In *Natural Gas Pipe Line Company* v. *Slattery*, 302 U. S. 300, 82 L. ed. 276 (1937), the appellant company was an

affiliate, as defined by the Illinois Public Utilities Act, of the Chicago District Pipe Line Company, an Illinois corporation, and as such was ordered by the Illinois Commerce Commission to make available to the Commission certain of its accounts and records relating to transactions between it and the District Company, for use in a proceeding before the Commission to determine proper rates to be charged by the District Company. The Pipe Line Company was a Delaware corporation transmitting gas from Oklahoma into Illinois, where it sold and delivered the gas to the District Company. The District Company then sold the gas to other companies which in turn distributed it to Illinois consumers. Notwithstanding the interstate character of the transactions between the District Company and the Natural Gas Pipe Line Company in the District Company's procurement of the gas, this Court upheld the action of the Illinois Commission as a proper exercise of its jurisdiction in determining intrastate rates to be applied by the District Company in its disposal of the gas to the Illinois distributing companies.

Even the provisions of the Natural Gas Act, upon which Appellant relies heavily, reflect the soundness of our contention that the transmission of natural gas from the original sources of production to the ultimate consumers need not be treated as one indivisible transaction but may be divided and segregated so that such transmission may well be held to be interstate in character up to a certain point and intrastate beyond that point, when it is said, in Section 1 (b):

> "The provisions of this chapter shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial or any other use, and to natural gas companies engaged in such transportation and sale, but shall not apply to any other transportation or

sale of natural gas or to the local distribution of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas."

(b)

The Interstate Character of Such Transmission Terminates Upon the Delivery of the Gas to the Appellant in the State of Illinois and the Appellant's Subsequent Activities, in Selling and Delivering Such Gas to Its Customers Wholly Within This State, Are Purely Local in Character.

We deem it so well established by the decisions of this Court as to need no citation of authority, that neither the question of what constitutes engaging in interstate commerce, nor the question of what affects interstate commerce to an extent requiring Federal supervision, are to be determined by set legal formula, but are to be determined from the facts as each individual case arises; and that with respect to what affects interstate commerce, there is a "necessary well established distinction between direct and indirect effects," the latter affording no ground for Federal control.

Appellees readily concede that up to the point where the gas is delivered to Appellant in Illinois the transmission of such gas is a movement in interstate commerce. Appellees respectfully suggest, however, that the character of those prior dealings and transactions is not the question at issue in this case. While those prior dealings and transactions may be considered in determining the question actually at issue, the question itself is the character of Appellant's dealings and transactions subsequent to its receiving the gas.

As we read the record, we believe the following state-

ments may be said fairly to summarize the facts from which this issue is to be determined.

1. Except for subsequent retirements and additions, all of the property now owned and operated respectively by Appellant and Panhandle Eastern was owned and operated on or shortly before June 30, 1938 by the Panhandle Illinois Pipe Line Company, by whom it was at about that time disposed of to Appellant and Panhandle Eastern, respectively, the latter taking over the large transmission main extending across the State and its appurtenant equipment, and Appellant all the remaining property and equipment, all of which was located in Illinois.

2. Prior to these transfers Panhandle Illinois Pipe Line Company had carried on both the business of transporting gas into Illinois through the large transmission main, and the business of disposing of the gas to Illinois consumers, and at the time of the transfer of the property these businesses were also transferred to Panhandle Eastern and Appellant, respectively.

3. The purpose of these transfers of property and business was stated to the Illinois Commerce Commission by Counsel for both Appellant and the then owner Company, in a proceeding brought before that body to obtain approval of the transfers, to be "the separation of the property and business of Panhandle Illinois Pipe Line Company to the end that the property and business which is purely intrastate and of a local public utility character, will be owned and operated by Illinois Natural Gas Company, an Illinois corporation, operated as a public utility in this State, and that the main line and compressor station not used, useful or necessary in the conduct of a public utility business, be transferred to the Panhandle Eastern Pipe Line Company, a Delaware corporation."

4. In the same proceeding last referred to, there was presented to and approved by the Illinois Commerce Commission a contract between Appellant and the Panhandle Eastern, obligating Panhandle Eastern to supply gas for all Appellant's requirements.

5. All gas in any way dealt with by Appellant is

received by Appellant from Panhandle Eastern under this contract at the points of connection of Appellant's laterals with Panhandle Eastern's mains, where warranted title and complete possession and responsibility pass to Appellant.

6. The contract is formal and complete, and employs extensive detail in fixing the respective rights and obligations of the parties usual to contracts arrived at after arm's length bargaining.

7. All of the physical property in any way devoted to the treatment and handling of the gas from the time of its receipt by Appellant is owned and operated by Appellant and is located in Illinois.

8. All of the physical treatment and handling of the gas from the time of its receipt by Appellant are by Appellant and occur entirely within Illinois. No movement outside the State takes place, nor does the record show that any such movement was ever contemplated.

9. Immediately upon receiving the gas, Appellant reduces the pressure, through equipment owned and operated wholly by itself, to that it deems best suited to its own economies.

10. Appellant disposes of all the gas in accordance with rate schedules filed with the Illinois Commerce Commission.

11. Aside from billing and payment for the gas, the only facts of record in any way pertaining to interstate commerce subsequent to Appellant's receiving the gas are that the movement of the gas in Appellant's laterals and thence to consumers' burners is caused by what remains of the pressure in Panhandle Eastern's mains after reduction by Appellant at the points of connection and that Appellant's employees inform Panhandle Eastern's dispatcher at Kansas City of Appellant's requirements.

12. The record contains no testimony tending to show that Appellant's compliance with the Commission's order would in any way affect Panhandle Eastern's transmission of the remaining gas transmitted by it into Illinois, or across Illinois, or Panhandle Eastern's ability to supply gas to its interstate customers.

This Court has already foreclosed any claim that Appellant's dealings and transactions concerning the gas subsequent to receiving it are given even color of engaging in interstate commerce by the fact that Appellant disposes of the gas to distributing companies who in turn distribute it to consumers.

In the case of *Natural Gas Pipe Line Company* v. *Slattery*, 302 U. S. 300, 82 L. ed. 276, which we have already drawn to the Court's attention, the jurisdiction of the Illinois Commission over the Natural Gas Pipe Line Company necessarily depended upon the Commission's having jurisdiction over the District Pipe Line Company, an affiliate. The District Pipe Line Company received its gas in Illinois after transportation from without the State, and then sold and delivered it to distributing companies within Illinois, by whom it was in turn distributed to consumers, just as Appellant is doing here. With respect to the inter- or intra- state character of these dealings and transactions of the District Company this Court, in holding the District Company to be engaged in intrastate commerce, said (loc. p. 277):

> "Appellant, a Delaware corporation, sells in Illinois natural gas, which it transports through its pipe lines from Oklahoma to points in Illinois where, pursuant to a long term contract, it delivers the gas to the District Company, an Illinois corporation. The latter is engaged in intrastate commerce in Illinois where it sells the gas, which it purchases from appellant, to other companies which in turn distribute the gas to consumers within the state."

In that case the appellant brought the gas across State lines into Illinois where it sold and delivered it to the District Company and it was one of its contentions that the Commission's order was a step toward unconstitutional action. As to this, it was pointed out in the Opinion that the proceeding pending before the Commission concerned

only the rates charged by the District Company in its disposal of the gas, and that the Commission could make no order with respect to the importing company's rates or its contract with the District Company, and that it was not even contended that the Commission had or threatened to make any order in any way affecting the rates or contract between the Pipe Line Company and the District Company.

As in that case, the Commission in the case here before the Court dealt in no manner with the Panhandle Eastern or its contract with Appellant, but confined its order to what transpired after Appellant's receipt of the gas. While the Opinion does not set forth details of the District Company's property, operations and its contract with the Natural Gas Pipe Line Company to the extent that Appellant's dealings and transactions and its contract with Panhandle Eastern are disclosed in this case, there is, we respectfully suggest, sufficient in the opinion to make clear, in the light of common knowledge of natural gas transmission and operation, a substantially exact parallel between the District Company and Appellant in respect to the respective inter- or intra-state character of their dealings and transactions.

The case of *J. Bacon & Sons* v. *Martin*, 305 U. S. 380, 83 L. ed. 233, 235 (1939), was an appeal from a judgment of the Circuit Court of Appeals of Kentucky, dismissing an action brought to have declared invalid a statute imposing a tax upon "the receipt of cosmetics in the State by any Kentucky retailer," as applied to cosmetics brought into Kentucky from without the State.

The Kentucky Court had construed the word "receipt" as used in the statute as relating to dealings and transactions concerning the cosmetics which occurred only *subsequently to their having been received* in Kentucky by the taxpayer, and this Court held that under that interpretation of the word the appeal should be dismissed for want of a Federal question. As in that case, the Commission, in the

case here before the Court, dealt only with what transpired after the imported commodity had been received.

In *Atlantic Coast L. R. Co.* v. *Standard Oil Co.*, 275 U. S. 257, 72 L. ed. 270 (1927), this Court noted "purposes and business" as factors for consideration in determining whether a given transaction was inter- or intra-state. The Standard purchased, title passing upon delivery, oil brought by the seller in ships from Tampico and Louisiana and delivered by seller's ships' pumps into Standard's storage tanks at Port Tampa and the St. John's River, Florida. Simultaneously with the movement into Standard's tanks by the ships' pumps, a portion of the oil moved from Standard's tanks into Standard's tank cars for further shipment to points in Florida, and it was contended by the railroad that these tank car shipments were a portion of a complete interstate movement and therefore governed by interstate rates. The action was brought by the Standard to enforce application of intra-state rates, and this Court held that the tank car movements were intra-state notwithstanding the simultaneous movement from ship to reservoir and reservoir to cars. The Court there said:

> "The argument is made that these are continuous streams of oil from Baton Rouge or Tampico into bulk stations in the interior of Florida where it is sold to the customers of the plaintiff, and that its interstate character continues through that entire passage. It may be, as suggested in the argument, that oil is being discharged into plaintiff's receptacles for its storage at the same time that it is being discharged from the storage tanks into storage tank cars for its distribution, but that is not at all inconsistent with its being a closing of an interstate or foreign transportation and a beginning of intrastate distribution for the purposes and business of the plaintiff."

In *Southern Natural Gas Co.* v. *Alabama*, 301 U. S. 148, 81 L. ed. 970, 975 (1936), the position of the Southern Company was akin to that of the Panhandle Eastern in the case here before the Court. The Southern Company brought

gas from Louisiana and Mississippi into Alabama by continuous pipe line movement under gas well pressure and there itself sold and delivered the gas direct to four purchasers. The State of Alabama imposed upon the Southern Company a franchise tax measured by the total amount of capital employed by the Company in that State, from all of which the Company claimed exemption on the ground that all was devoted to interstate business. Three of the purchasers were Alabama utility companies to whom the Southern Company itself directly sold and delivered the gas, just as Panhandle Eastern sells and delivers to Appellant.

The fourth customer was the Tennessee Coal, Iron & R. R. Co., which also purchased direct from the Southern Company and to whom the Southern Company itself delivered the gas at three separate steel plants under continuous movement from the gas fields through service lines installed by the Southern Company from its main line to points of delivery. Notwithstanding this was done by the Southern Company which itself brought the gas in the State, it was held to constitute intrastate commerce. As one of the bases for the holding, it was said in the opinion that

> "under its contract with the Tennessee Company, which brought for consumption by itself and its subsidiaries in industrial plants, appellant" (Southern Company) "agrees not simply to install metering stations for measuring the amount of gas delivered, but to establish the requisite lines running to the described plants in order that the gas might be furnished in a manner suited to the consumers' needs."

In that case the importing company was itself doing exactly what Appellant is doing in the case here before the Court, except that Appellant furnishes the gas to other companies who in turn supply it to consumers, which under the holding in the case of *Natural Gas Pipe Line Co.* v. *Slattery, supra,* is a circumstance in no way affecting the intra-state character. Clearly, we submit, if such action on

the part of the importer itself is intrastate, then like action by an independent business entity whose purposes and business after receiving the gas are confined solely to business within the State of Illinois, must equally be intrastate.

In *Schechter* v. *United States,* 295 U. S. 495, 79 L. Ed. 1570, 1587 (1935), poultry was shipped from without the State into New York City and there for the most part handled by commission men acting as agents for the out-of-state shippers, making the transactions thus far tantamount to the out-of-state shipper shipping to himself in New York City. Through the commission men the owner then sold to the Schechter Company either at the railroad terminals in New York City or at the Washington Market, and the Schechter Company then trucked the poultry to the slaughterhouse where it was immediately slaughtered and sold to retail poultry dealers and butchers, who in turn sold directly to consumers.

The relationship of the Schechter Company to this poultry thus seems to us to be parallel with the relationship of the Appellant to the gas here in question. With the gas, Panhandle Eastern. the owner, transmits it to itself in Illinois where it sells and delivers it to Appellant; Appellant receives it from Panhandle Eastern's mains into its own laterals, immediately reduces its pressure, and thence transmits it through its lateral to a point where it further reduces it just before delivery to Appellee Company; and Appellee Company in turn sells it to the ultimate consumer. With the poultry, the out-of-state owners shipped to their agents (themselves) in New York City, and Schechter bought from these shippers at the railroad terminal and transported the poultry a short distance to his slaughterhouse, where he slaughtered and then sold the poultry to retail dealers and butchers, who in turn sold to the consumers. In holding Schechter not to be engaged in interstate commerce, the Court said (L. Ed. loc. p. 1587):

"The undisputed facts thus afford no warrant for

> the argument that the poultry handled by defendants at their slaughterhouse markets was in a *'current'* or *'flow'* of interstate commerce and was thus subject to congressional regulation. The mere fact that there may be a constant flow of commodities into a State does not mean that the flow continues after the property has arrived and has become commingled with the mass of property within the State and is there held solely for local disposition and use."

The fact that Appellant reduces the pressure of the gas, while not controlling, is among those to be considered (*East Ohio Gas Company* v. *Tax Commission,* 283 U. S. 465, 75 L. ed. 1171, and *Southern Natural Gas Co.* v. *Alabama,* 301 U. S. 148, 81 L. ed. 970).

Appellant receives the gas at the points of connection at not to exceed 200 pounds pressure, and immediately reduces this pressure to others varying from 38 to 173 pounds. Each reduction is made by Appellant itself, after having received the gas. The purpose of the reductions is undisputed. They are made to effect economy in Appellant's own operations, and they vary to meet Appellant's needs in its individual laterals. They are solely for Appellant's own benefit and convenience, and their only effect upon interstate transmission of the gas is to eliminate a portion of the pressure employed in the interstate movement. In so far as disclosed by the record they are made solely for and in the furtherance of Appellant's "purposes and business" in its disposal of the gas within Illinois.

Just as reduction in pressure, while entitled to consideration, is not a controlling factor, so also continuous movement of the gas through Appellant's laterals under pressure supplied in its interstate transmission (one of the only two factors which in our opinion pertain to interstate dealings with the gas after its receipt by Appellant), while entitled to consideration, is not a controlling factor. That it is equally as compatible with intrastate movement as with interstate, has been repeatedly recognized by the de-

cisions of this Court, among which are those in some of the cases cited by Appellant itself.

In the case of *East Ohio Gas Company* v. *Tax Commission, supra,* gas brought by the East Ohio Company from West Virginia and Pennsylvania into Ohio and thence into the local mains of the East Ohio Company, all under continuous out-of-state pressure, was held to be interstate to the local mains and intrastate thereafter.

In the case of *Public Utilities Commission* v. *Landon,* 249 U. S. 236, 63 L. ed. 577, gas brought into the State of Missouri by the Kansas Natural Gas Company and there sold to a Missouri public utility, moving continuously from without the State to and through the mains to the customers of the Missouri utility, was held to move in inter- and intra- state commerce.

In *Missouri ex rel. Barrett* v. *Kansas Natural Gas Company,* 265 U. S. 298, 68 L. ed. 1027, gas brought into Missouri by the Kansas Natural Gas Company and there delivered to Missouri utilities under continuous pressure from without the State was held to be interstate in its movement to the distribution systems of the Missouri utilities and intrastate in its movement thereafter.

In *Southern Natural Gas Corporation* v. *Alabama,* 301 U. S. 148, 81 L. Ed. 970, gas brought from without the State into Alabama by Southern Corporation and there delivered to steel plants under continuous pressure from without the State to and through service lines supplying the plants, was held to include both inter- and intra- state movements.

While not claiming for it any great weight, we do venture to suggest to the Court that, as between reduction in pressure and continuous movement, the former may in this case properly be regarded as the more influential. It is an action involving actual expense and effort put forth by Appellant solely in the interests of what takes place in

that part of its business occurring after it has received the gas, while the use of the out-of-state pressure calls for no effort or expense on its part.

As to the forwarded information concerning the probable needs of Appellant's customers, the actual use made of the information is by Panhandle Eastern alone, in determining whether that Company can meet its contract obligations to supply Appellant's requirements from its own wells, and if so from what wells and in what quantities from each, or whether it must purchase gas from others which its contract obligates it to do if the supply from its own wells is insufficient. The direct relation of the information is to the contract obligation, and the needs of Appellant's customers constitute only the measure of the obligation.

Under the decisions of this Court there can be no question but that in the continuous movement of gas across State lines to the point of its ultimate consumption there may well be a point during the movement at which, for all purposes of determining inter- or intra- state character, the interstate movement comes to what, in respect of usual commodities, this Court has repeatedly termed "at rest"; where the interstate movement of the gas ends, and and its intrastate movement begins. Nor can there be any question under the decisions of this Court that because the "at rest" stage in the case of gas is necessarily theoretical, it is any less potent in establishing the end of interstate and the beginning of intrastate commerce as to gas, than is the actual "at rest" of the more solid articles of merchandise and commerce.

In the case of *Chicago M. & St. P. R. Co.* v. *Iowa*, 233 U. S. 334, 58 L. ed. 988, the "at rest" situation was that coal shipped from Illinois into Iowa remained upon the Iowa interchange track of the carrier while the shipper notified the carrier that it desired further shipment with-

in Iowa, which was then made by the carrier in the same car in which it was brought from Illinois. As to this the Court said (loc. pp. 992, 993):

> "But the fact that commodities received on interstate shipments are reshipped by the consignees, in the cars in which they are received, to other points of destination, does not necessarily establish a continuity of movement, or prevent the reshipment to a point within the same state from having an independent and intrastate character. *Gulf, C. & S. F. R. Co.* v. *Texas*, 204 U. S. 403, 51 L. ed. 540, 27 Sup. Ct. Rep. 360; *Railroad Commission* v. *Worthington*, 225 U. S. 101, 109, 56 L. ed. 1004, 1008, 32 Sup. Ct. Rep. 653; *Texas & N. O. R. Co.* v. *Sabine Tram Co.*, 227 U. S. 111, 129, 130, 57 L. ed. 442, 449, 450, 33 Sup. Ct. Rep. 229. The question is with respect to the nature of the actual movement in the particular case; and we are unable to say upon this record that the state court has improperly characterized the traffic in question here. In the light of its decision, the order of the Commission must be taken as referring solely to intrastate transportation originating at Davenport."

Bearing in mind that the sale of the gas by Appellant to other utilities rather than directly to consumers does not of itself in any way militate against the intrastate character of its dealings and transactions subsequent to its receiving the gas, as was held by this Court in *Natural Gas Pipe Line Co.* v. *Slattery, supra,* we respectfully and most earnestly suggest to the Court that the facts in the case here at issue manifest Appellant's business subsequent to its receiving the gas to be in intra- and not interstate commerce, under either of the two major tests laid down by this Court for the determination of such distinction.

The undisputed facts of record establish that after receiving the gas, all of Appellant's dealings and transactions with respect to it, including sole ownership of all property and its complete control and entire operation, all

physical treatment of the gas, and all commercial activities with respect to it, are local to the State of Illinois, and that it is therefore the "local interest" which is paramount.

These undisputed facts also establish that the "purposes and business" of Appellant subsequent to its receiving the gas are confined solely to transactions and dealings all of which are within the State of Illinois. The purposes were declared before the Illinois Commission at the very beginning of Appellant's activities, and have ever since been strictly adhered to in the carrying on of the entire business which it transacts after receiving the gas. There is a complete absence from the record of any fact tending to show that throughout the conduct of its entire business subsequent to receiving the gas, there has been any departure from its declared purposes.

As even a cursory review of Appellant's brief will disclose, much of its argument is predicated upon the provisions of the Natural Gas Act and its legislative background. While it is our position that the Congress was without power to legislate with regard to intrastate commerce, it is also our contention that the background and language used in that Act demonstrate the soundness of our contention that not only is the transmission of natural gas susceptible of division into distinct parts, some interstate and some intrastate, but that the interstate character of such transmission of gas terminates upon the delivery of the gas to the Appellant within the State of Illinois, and that Appellant's subsequent activities, in selling and delivering such gas to its customers wholly within the State of Illinois, are purely local in character.

When carefully examined it will be seen that the Natural Gas Act not only does not attempt to regulate intrastate commerce but that it is so drawn as to leave the States free to regulate all sales and deliveries of natural

gas within their borders, subsequent to the original delivery of such gas by the interstate pipelines without regard to whether or not, under other acts, some sales might be considered interstate in character.

The limitations and exclusions of the Natural Gas Act are as follows:

> SECTION 1 (b). "The provisions of this Act shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use, and to natural-gas companies engaged in such transportation or sale, but shall not apply to any other transportation or sale of natural gas or to the local distribution of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas."
>
> SECTION 2 (6). " 'Natural-gas company' means a person engaged in the transportation of natural gas in interstate commerce, or the sale in interstate commerce of such gas for resale."
>
> SECTION 2 (7). " 'Interstate commerce' means commerce between any point in a State and any point outside thereof, or between points within the same State but through any place outside thereof, but only insofar as such commerce takes place within the United States."

It is our position that the Natural Gas Act expressly leaves to the several States the power and right to control and regulate the sale and distribution of natural gas within their respective borders once the gas has left the interstate mains (here the mains of the Panhandle Eastern).

This interpretation is confirmed by other sections of the said Natural Gas Act which demonstrate very clearly that the Congress intended that the transmission of gas from the wells to the ultimate consumers was to be controlled in part by the Federal Power Commission and

in part by the various State Commissions, when it provided as follows:

> SECTION 5 (b): "The Commission upon its own motion or upon the request of any State Commission, whenever it can do so without prejudice to the efficient and proper conduct of its affairs, may investigate and determine the cost of the production or transportation of natural gas by a natural-gas company in cases where the Commission has no authority to establish a rate governing the transportation or sale of such natural gas."
>
> SECTION 9 (b). "The Commission, before prescribing any rules or requirements as to accounts, records, or memoranda, or as to depreciation or amortization rates, shall notify each State Commission having jurisdiction with respect to any natural-gas company involved and shall give reasonable opportunity to each such Commission to present its views and shall consider such views and recommendations."
>
> SECTION 17 (b). "The Commission may confer with any State Commission regarding rate structures, costs, accounts, changes, practices, classifications, and regulations of natural-gas companies; and the Commission is authorized, under such rules and regulations as it shall prescribe, to hold joint hearings with respect to any matter with respect to which the Commission is authorized to act. The Commission is authorized in the administration of this chapter to avail itself of such cooperation, services, records, and facilities as may be afforded by any State Commission."

The Resolution adopted in 1935 by the National Association of Railroad and Utilities Commissions and presented to a Congressional Committee, quoted at pages 57 and 58 of Appellant's brief, further confirms the soundness of our position when it recommended that the then proposed Act

> "• • • be so drawn as in no way to limit or impair the power of the states to regulate intrastate and local service and the rates applicable thereto; • • •."

We therefore submit that the interstate character of the transmission of the gas terminates upon its delivery to the Appellant in the State of Illinois and that Appellants subsequent activities, in selling and delivering such gas to its local customers wholly within the State of Illinois, are purely local in character.

(c)

The Authorities Cited by Appellant Do Not Support Its Contentions and Are Consistent With the Above Propositions.

In contending that subsequently to its receipt of the gas Appellant is engaged in interstate commerce, Appellant claims an analogy between the facts here before the Court and those passed upon in certain decisions of this Court, which in our opinion is unwarranted.

In the first of these cases, *Peoples Natural Gas Company* v. *Public Service Commission,* 270 U. S. 552, 70 L. Ed. 726, the gas company involved owned and operated a pipe line from the state line to various communities in the State of Pennsylvania, in which pipeline gas from two separate and distinct sources was transported. Part of this gas was purchased in the State of West Virginia and part of it was produced locally in Pennsylvania. The Pennsylvania commission ordered the company to furnish gas to a certain local utility and the company appealed. It appeared of record that although gas from within the state and from without the state was commingled the proportions of each were known and that the volume of gas produced locally was in excess of that required by the company to comply with the Commission's order.

This Court therefore affirmed the order of the local commission, holding that the order in question did not affect interstate commerce. Thus the actual *holding* in the case

does not support appellant's position. It is only certain *dicta* of the Court that are seized upon by counsel as appearing to assist them. It is also interesting and material to note that in the cited case no reduction in the pressure of the gas was affected upon the delivery of such gas to the company affected by the order.

In the case of *East Ohio Gas Co.* v. *Tax Commission*, 283 U. S. 405, 75 L. Ed. 1171, also cited by Appellant, the Gas Company was assessed a tax based upon all of its sales of gas in that state even though 75% of the gas so sold by it in that state had been produced in other states and had admittedly moved in interstate commerce. The Gas Company sought to enjoin the tax in question and a three judge court sustained the state tax and dismissed the complaint. On appeal to this Court the decree was affirmed on the ground that:

> "The amounts were calculated on gross receipts derived wholly from appellant's intrastate business notwithstanding the gas used had moved in interstate commerce" (loc. p. 472).

It may thus be readily seen that in so far as the actual *holding* of this Court in the cited case is concerned it is contrary to Appellant's position here. It should also be noted that this Court, in addition to the language cited by Appellant at page 19 of its brief, said at, page 471:

> "It follows that the furnishing of gas to consumers in Ohio municipalities by means of distribution plant to supply the gas suitably for the service for which it is intended is not interstate commerce but a business of purely local concern exclusively within the jurisdiction of the State."

At pages 471 and 472, this Court, in discussing two of its earlier cases, viz.: *Public Utilities Comm.* v. *Landon*, 249 U. S. 236, 63 L. Ed. 577, and *Missouri* v. *Kansas Gas Co.*, 265 U. S. 298, 68 L. Ed. 1027, went on to say:

> "In the former the court said (p. 245): 'Interstate

movement (of natural gas being transported from State to State) ended when the gas passed into local mains.' In the latter, it was said (p. 308): 'With the delivery of the gas (transported from one State to another) to the distributing companies • • • the interstate movement ends. Its subsequent sale and delivery by these companies to their customers at retail is intrastate business and subject to state regulation. • • • In such case the effect on interstate commerce, if there be any, is indirect and incidental • • • (p. 309). The business of supplying, on demand, local consumers is a local business, even though the gas be brought from another state and drawn for distribution directly from interstate mains; and this is so whether the local distribution be made by the transporting company or by independent distributing companies. In such case the local interest is paramount, and the interference with interstate commerce, if any, indirect and of minor importance' • • •."

We submit that the cited case, taken as an entirety, supports the Appellees' and not the Appellant's contentions in the case at bar.

In the case of *Public Utilities Commission* v. *Landon*, 249 U. S. 236, 63 L. ed. 577, also cited by Appellant, the gas company collected gas in Kansas and Oklahoma and delivered it by pipe line to customers in Kansas and Missouri. The public service commissions of Kansas and Missouri undertook to regulate gas rates in their respective States and the gas company sought to enjoin their doing so. The trial court enjoined the said commissions and the defendant commissions appealed to this court, which reversed and remanded the case with instructions, holding that the challenged orders did not affect interstate commerce and that the receivers of the gas company were in no position to complain. Certainly this *holding* does not support Appellant's contentions here.

It should also be here noted that in reaching such a result, this Court, at page 245, said:

> "But in no sense can it be said, under the facts here disclosed, that sale and delivery of gas to their customers at burner-tips by the local companies operating under special franchises constituted any part of interstate commerce. The companies received supplies which had moved in such commerce and then disposed thereof at retail in due course of their own local business • • • Interstate commerce is a practical conception and what falls within it must be determined upon consideration of established facts and known commercial methods. • • • Interstate movement ended when the gas passed into the local mains. • • •."

In the case of *Southern Gas Corp.* v. *Alabama*, 301 U. S. 148, 81 L. ed. 970, a tax was imposed by the State of Alabama upon the gas company based on the capital employed in that State. The Supreme Court of Alabama upheld the tax and this court, on further appeal, affirmed the decision of the State court. Obviously this *holding* in no way assists Appellant here. In reaching its conclusion, this Court, at pages 154 and 155, said:

> "From the agreed facts we are unable to conclude that the business thus conducted in Alabama was entirely an interstate business. While the gas which appellant sold was brought into the State from Louisiana, it appears that appellant carried on in Alabama activities of an intrastate character. • • • We perceive no essential distinction in law between the establishment of such a local activity to meet the needs of consumers in industrial plants and the services to consumers in the municipalities which was found in the Ohio case to constitute an interstate business. As was said in that case: 'The treatment and division of the large volume of gas is like the breaking of an original package, after a shipment in interstate commerce, in order that its contents should be treated, prepared for sale and sold at retail."

It should be noted in this connection that Appellant admittedly serves not only various public utilities located throughout the State of Illinois but also serves various industrial customers located in the State of Illinois directly and without the intervention of any intermediate distributing agency (see Appellant's Brief, p. 4, R. 29).

The case of *National Labor Relations Board* v. *Central Missouri Telephone Company*, 115 Fed. (2d) 563, is too far afield to be of any assistance to the Appellant. There the National Labor Relations Board sought an order in the Circuit Court of Appeals for the 8th Circuit enforcing its order directing a telephone company located in the State of Missouri to cease and desist from certain unfair labor practices.

It is well recognized that because of the general scope of this type of social legislation the courts have viewed such enactments liberally to accomplish the admittedly proper end which the Congress sought to reach. Such a situation is not analogous to the facts in the case at bar. It should also be noted that although all of the respondent's lines in the cited case were located within the State of Missouri such lines were directly connected with the Bell System in other states of the Union and were frequently utilized in sending messages in and out of that State. Such lines therefore were in fact but integral parts of a unified interstate system over which messages between persons in different states could be sent.

In the case of *United States* v. *Erie R. Co.*, 280 U. S. 98, 74 L. Ed. 187, also cited by Appellant, the transportation of the wood pulp within the State of New Jersey was held to be in interstate commerce on the express ground that: "the broker acts only as agent (of the ultimate consignee) and that from the time that the pulp is put aboard the steamer, there is a continued intent that it should be transported to Garfield (its ultimate destination)." The Court

also there stated that there was "ample evidence" to sustain that finding.

The cited case is readily to be distinguished from the case at bar in that, among other things, there is no allegation or evidence in this case that the Appellant acts as agent for its customers or for the Appellee.

Counsel also cites the case of *United States* v. *Rock Royal Co-Operative*, 307 U. S. 533, 83 L. Ed. 1446, which involved an order issued by the Secretary of Agriculture under the Agriculture Marketing Agreement Act of 1937. This case, like the cited *National Labor Relations Board* v. *Central Missouri* case, is too far afield to be of any real assistance here. As in the last named case, the broad economic and social scope of the Act in question has led our courts to take a liberal view of the jurisdictional features of such situations. Such a case is not analogous to such a case as is here before the court. In the cited case it should also be noted that the local sales were merely a step in the subsequent interstate flow of the products in question. Such is not the case here. While Appellant argues that this case conversely supports its position here, we submit that the true converse would be that local sales following interstate sales are intrastate sales, as the cases clearly hold.

Another case cited by Appellant is that of *Carson Petroleum Co.* v. *Vial*, 279 U. S. 95; 73 L. Ed. 626. In that case the oil shipments did not originate in Louisiana but were merely in that State on their way from another state to a foreign country. There this Court held that under such circumstances the State of Louisiana could not tax them. Neither this holding nor the language used by this Court assists Appellant's position here. Such a case cannot possibly aid Appellant unless it is assumed that the Appellant acts merely as an intermediate convenience in a purchase and delivery of gas directly from the Panhandle

Eastern to the Appellee and other local Illinois customers. Even then it should be noted that it is merely a converse proposition which would not be applicable unless the gas was transported out of the State of Illinois after its receipt here, which is not true.

In the case of *State Tax Commission* v. *Interstate Gas Company*, 284 U. S. 41, 76 L. Ed. 156, also cited by Appellant, the Gas Company collected gas in the State of Louisiana and transported this gas by high pressure line through the State of Mississippi back to Louisiana where almost its entire output was sold. A fraction of one percent of the gas was sold in the State of Mississippi, the deliveries being affected from the high pressure main passing through that State, although pressure was reduced in making such delivery. It is obvious that the cited case would only be analogous should the Illinois Commission attempt to assert authority over the Panhandle Eastern Company where it delivers its gas to the Appellant.

Appellant also cites the case of *Public Utilities Comm.* v. *Attleboro Steam & Elec. Co.*, 273 U. S. 83, 71 L. Ed. 549. There the Public Utility Commission of Rhode Island attempted to increase the rate to be changed by a Rhode Island electric generating company on current delivered by it to a utility located in the State of Massachusetts. Obviously the effect of the order was to regulate the price of electricity in another state. To make the facts in the case at bar conform to those in the cited case the State of Texas would have to attempt to regulate the prices to be charged by the Panhandle Eastern Company to customers in states other than Texas. The case bears no analogy to the case at bar. It is interesting to note that, even the facts as so presented, Mr. Justice Brandeis dissented on the ground that the business was primarily intrastate and not interstate in character.

The case of *Western Union Telegraph Company* v. *Fos-*

ter, 247 U. S. 105, 62 L. Ed. 1006, also cited by Appellan is likewise not in point. There, as this Court express held, the ultimate recipients of the messages were fully d termined before the messages were originally dispatch in the foreign state and once commenced the message w conveyed without interruption in interstate commerce. the case here before this Court the Panhandle Eastern Co pany has no control whatsoever over the persons to who Appellant may chose to sell the gas after it has once be delivered to the Appellant in Illinois. It is specifical provided in the contract between the Panhandle Easte Company and the Appellant that once the gas is deliver to the Appellant the latter "shall be deemed in exclusi control and possession" of such gas, and "responsible f any injury or damage caused thereby." Thus it ma readily be seen that the *Foster* case is not analogous the case at bar.

The case of *In Re Billings Gas Company*, 35 P. U. (N. S.) 321, is also cited by the Appellant. It does n appear that in that matter the pressure was reduced whe the Ohio Oil Company delivered the gas to the Billing Gas Company at the state line and it also seems that th only real question actually presented to the Commissio was whether the companies in question were to be require to file reports covering their entire business with th Federal Commission. No question was presented as t the rights of the several states, in which these companie operated, to regulate or tax them. It should further b noted that the cited decision is nothing more than a Com mission's opinion in a case only vaguely analogous to th case at bar. We submit that the opinion of the Illinoi Commerce Commission, based on the actual facts of th case here at bar and already affirmed by the Suprem Court of Illinois, is entitled to more weight.

The last case cited by Appellant on this point is that o *Panhandle Eastern Pipe Line Co.* v. *Public Service Com*

mission, et al., 93 S. W. (2d) 675. In that case the Missouri Public Service Commission purported to order the Panhandle Eastern Pipe Line Company itself to furnish gas to the City of Fulton, Missouri. This order was held void by the Supreme Court of Missouri. In order to present a similar situation in the case at bar the Illinois Commerce Commission would have to order Appellant's parent company, Panhandle Eastern, to itself deliver gas to the Appellee Company. This the Illinois Commission has not attempted to do. Properly understood the cited case is not relevant or helpful in the proper determination of the case at bar.

Concluding this subdivision of our brief, we submit that the authorities cited by Appellant do not support its contention and are consistent with our contention that the interstate character of the transmission of the gas terminates upon its delivery to the Appellant in the State of Illinois, and that the Appellant's subsequent activities in selling and delivering such gas to its local customers wholly within the State of Illinois, are purely local in character.

II and III.

The Illinois Commerce Commission Has Jurisdiction, Under the Illinois Commerce Commission Act, Over Appellant's Activities.

The Order in Question Is Not Repugnant to or in Conflict With the Commerce Clause of the Federal Constitution.

Appellant's contention under Point II of its brief that the Illinois Commerce Commission has no jurisdiction over Appellant's activities because of a provision of the Illinois Statute creating said Commission which states that its provisions shall not be applicable to interstate com-

merce, and Appellant's further contention under Point II of its brief that the order in question is repugnant to an in conflict with the Commerce Clause of the Federal Co stitution, are each predicated upon Appellant's primar assumption that in its activities within the State of Illi nois subsequent to its receipt of the gas it is engaged i interstate and not intrastate commerce.

It is conceded that should it be first determined tha Appellant's activities within the State of Illinois subse quent to its receipt of the gas from the Panhandle Easter are such as to constitute interstate and not intrastate com merce, then the Illinois Commerce Commission was with out power to enter the order in question and the order is repugnant to and in conflict with the Commerce Clause of the Federal Constitution.

As is evidenced by the other points of this brief, the Appellees' position throughout has been and is that such activities are purely intrastate and not interstate in char acter. Thus it may readily be seen that Appellant's Points II and III merely beg the real issue which is— are such activities interstate or intrastate in character?

IV.

The Order in Question Is Not Repugnant to or in Conflict With the Natural Gas Act, and Is Entirely Consistent With Its Provisions.

Appellant's contention, under Point IV of its brief, that the order of the Illinois Commerce Commission is repugnant to and in conflict with the Natural Gas Act, is likewise predicated entirely upon Appellant's primary assumption that in its activities within the State of Illinois, subsequent to its receipt of the gas from Panhandle Eastern,

Appellant is engaged in interstate and not intrastate commerce.

If this primary assumption falls, the contention advanced by Appellant as its Point IV collapses of its own weight. As we have demonstrated under our Point I, the basic assumption upon which this contention rests is not well founded and is contrary to the facts in this case and the law applicable thereto. Thus viewed the Congress was without power to regulate the purely local activities of the Appellant even had it seen fit to do so.

Furthermore, an examination of the Natural Gas Act itself discloses that Congress, in enacting the legislation relied upon, not only limited the application of the Act to interstate commerce as it is usually considered and excluded intrastate activities of the type here presented but expressly restricted the effect of the Act to gas companies operating between points located in more than one state.

The limitations and exclusions of the Natural Gas Act are as follows:

> SEC. 1 (b). "The provisions of this Act shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use, and to natural-gas companies engaged in such transportation or sale, but shall not apply to any other transportation or sale of natural gas or to the local distribution of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas."
>
> SEC. 2 (6). " 'Natural-gas company' means a person engaged in the transportation of natural gas in interstate commerce, or the sale in interstate commerce of such gas for resale."
>
> SEC. 2 (7). " 'Interstate commerce' means commerce between any point in a State and any point outside

> thereof, or between points within the same State bu through any place outside thereof, but only insofar a such commerce takes place within the United States.'

It would be difficult to conceive how terms more direct positive and unambiguous than those above could hav been employed to confine the authority of the Federa Power Commission over natural gas companies to thos engaging in commerce across State lines. The language is too plain and comprehensive to admit of construction. In *United States* v. *American Trucking Associations,* 31 U. S. 534, 84 L. ed. 1345, 1351, this Court said:

> "There is, of course, no more persuasive evidence of the purpose of a statute than the words by which the legislature undertook to give expression to its wishes. Often these words are sufficient in and of themselves to determine the purpose of the legislation. In such cases we have followed their plain meaning. (*Taft* v. *Commissioner of Internal Revenue,* 304 U. S. 351, 359; *Helvering* v. *City Bank Farmers Trust Co.,* 296 U. S. 85, 89; *Wilbur* v. *United States,* 284 U. S. 231, 237; *Crooks* v. *Harrelson,* 282 U. S. 55, 60; *United States* v. *Missouri P. R. Co.,* 278 U. S. 269, 279; *George Van Camp & Sons Co.* v. *American Can Co.,* 278 U. S. 245, 253; *Caminetti* v. *United States,* 242 U. S. 470; *Pennsylvania R. Co.* v. *International Coal Min. Co.,* 230 U. S. 184.)"

The fact that Congress not only fixed the limits of the application of the Act but saw fit to expressly interdict its further application, is significant. Congress has expressly declared that the Act "shall not apply to any other transportation or sale" than those in interstate commerce, and by then defining what is "interstate commerce" within the meaning of the Act, thereby prohibited the Act's application even to interstate commerce, unless within the stated definition.

To fall within the definition, the commerce must cross State lines. It must either be from a point in a State to

a point outside, or traverse State lines in moving from point to point in the same State. Whatever its other attributes, unless it crosses State lines it is excluded from the Act's operation; and here, after receipt by Appellant, the gas remains wholly in Illinois.

It probably, in part at least, was a realization of the effect of this limitation in the Act itself that prompted Appellant's endeavor to tie together as a single entirety the entire dealings with and history of the gas from its production to its disposal by Appellant and thereby stretch the interstate character under which the gas is brought into Illinois and there delivered to Appellant into an interstate cover for its operations subsequent to its receiving the gas.

That the attempt must be abortive, is, we submit, clearly established by the decisions of this Court in those cases, heretofore cited, in which such an entirety of movement was, where the facts warranted, separated into its component parts for the purpose of ascertaining which of them were interstate, and which of them intrastate, commerce.

Not only is such separation permitted and required under the decisions of this Court, but the Natural Gas Act itself recognizes that there will occur, and provides that aid may be given therein to State Commissions by the Federal Power Commission, just such situations as that existing in this case where the gathering, transmission and disposal of the gas as a complete entirety involves both transactions which are in interstate commerce over which the Federal Power Commission has jurisdiction and transactions as well which are in intrastate commerce over which the State Commissions have jurisdiction. In such situations the Federal Power Commission is authorized to conduct investigations and make determinations with respect to the interstate portion of the complete entirety,

in order to aid the State Commissions in passing upon its intrastate portion. Section 5(b) provides:

> "The Commission upon its own motion, or upon the request of any State commission, whenever it can do so without prejudice to the efficient and proper conduct of its affairs, may investigate and determine the cost of the production or transportation of natural gas by a natural-gas company in cases where the Commission has no authority to establish a rate governing the transportation or sale of such natural gas."

Further recognition of the fact that the complete entirety of bringing gas into a State and there disposing of it may involve dealings and transactions of which a portion may be interstate and under the control of the Federal Power Commission while another portion may be intrastate and under the control of the State Commission, is given in Section 9(b), where it is provided:

> "The Commission, before prescribing any rules or requirements as to accounts, records, or memoranda, or as to depreciation or amortization rates, shall notify each State commission having jurisdiction with respect to any natural-gas company involved and shall give reasonable opportunity to each such commission to present its views and shall receive and consider such views and recommendations."

Further recognition is also given by the references to State commissions in many of the sections of the Act, particularly in Section 17(b) which provides for joint hearings by the Federal Power Commission and a State commission, thereby contemplating proceedings in which those Bodies cooperate equipollently for the regulation of a complete movement over respective parts of which each Body has its own jurisdiction. Section 17(b) provides:

> "The Commission may confer with any State commission regarding rate structures, costs, accounts, charges, practices, classifications, and regulations of natural-gas companies; and the Commission is authorized, under such rules and regulations as it shall

prescribe, to hold joint hearings with any State commission in connection with any matter with respect to which the Commission is authorized to act. The Commission is authorized in the administration of this chapter to avail itself of such cooperation, services, records, and facilities as may be afforded by any State commission."

Our view of the scope of the Natural Gas Act is further confirmed and strengthened by the Resolution adopted by the National Association of Railroad and Utilities Commissions and presented before a Congressional Committee considering such regulation, quoted by Appellant at pages 57 and 58, which recommended that the then pending legislation

> "* * * be so drawn as in no way to limit or impair the power of the states to regulate intrastate and local service and the rates applicable thereto; * * *."

We submit that the Natural Gas Act is so drawn as to leave the various States free to regulate and control the distribution of natural gas within their respective borders subsequent to the delivery of the gas to such States by the high pressure interstate pipe lines (such as the Panhandle Eastern in the case at bar).

Appellant, under Point IV of its brief, cites various cases for its contention that in such a situation as is here presented the enactment of Federal legislation has precluded the State commissions from acting.

All of these cases may be distinguished on at least two grounds. In the first place, each of these cases dealt with interstate not intrastate commerce and was therefore within the power of the Federal Congress to regulate. In the second place, each of the cited cases dealt with an Act in which the Congress clearly demonstrated that it intended to cover the entire field of action, and that no action by the States would be tolerated.

In the case at bar the Congress has no power to regulate

purely local intrastate transmission of gas. Secondly it has clearly demonstrated, as above shown, that it did not intend to fully occupy the field itself or to exclude State regulation. On the contrary the Act clearly shows that the Congress intended that both State and Federal commissions participate in such regulation.

The first case cited by Appellant, under this point, is *Hines* v. *Davidowitz*, 85 L. Ed. 366. That case does nothing more than to state that there is no rigid formula in this class of cases (which unless we fully agree) and that the primary question is to ascertain whether the local law creates an obstacle in the path of the objective of the Congress. As we have pointed out, the Natural Gas Act, far from prohibiting the States from taking action to regulate the local distribution of gas within such states, expressly provides for such action by the States.

The case of *Alabama & Vicksburg Ry. Co.* v. *Jackson & Eastern Railway Co.*, 271 U. S. 246, 70 L. Ed. 928, is next cited by Appellant. The holding in that case is strictly limited to main line junctions between interstate carriers. Not only is the cited case clearly distinguishable from the case at bar, where purely local intrastate transactions are involved but this Court there expressly recognized this distinction when it pointed out (at page 249) that the Transportation Act excluded from its effect any

> "spur, industrial, team, switching or side tracks, located wholly within one State, or of street, suburban, or interurban electric railways, which are not operated as a part or parts of a general steam railroad system of transportation."

and went on to say that:

> "It is clear that the connection here in question is not a track of this character."

Appellant then cites *O'Brien* v. *Western Union Telegraph Co.*, 113 Fed. (2d) 539. There the transmission of a telegram from Massachusetts to Michigan was involved. Both

sender and receiver were ascertained before the message started on its purely interstate journey. Not only was the commerce purely interstate in character but by the Act in question the Congress had demonstrated that the states were not to participate in the control set up by it.

The case of *Kentucky Natural Gas Corporation* v. *Public Service Commission of Kentucky*, 28 F. Supp. 509, affd. 119 F. (2d) 417, next cited by Appellant, is not applicable to such a situation as is presented by the case at bar. There the Kentucky Commission attempted to regulate directly the activities of the high pressure interstate pipe line and not merely the local company. It would only be analogous to a case where a State Commission might attempt to regulate not only the local Illinois Natural Gas Company but the interstate Panhandle Eastern Pipeline Company itself. That the Court intended to and did restrict the effect of its holding to the high pressure interstate pipe line company is clearly indicated by the following language found on page 513 (of 28 F. Supp.), after the language quoted by Appellant:

> "These conclusions, however, have no reference to the plenary power of the State Commission to regulate the distribution of gas by local distributing companies which purchase their supply at wholesale from the complainant, nor to the power of the Commission to require complainant to disclose to the Commission all information appropriate to any inquiry as to the relations between the complainant and its various wholesale customers, bearing upon the absence of 'an arm's length bargaining' or other facts and circumstances proper to be considered by the Commission in fixing reasonable rates governing local distribution. *Natural Gas Pipeline Co.* v. *Slattery*, 302 U. S. 300, 58 S. Ct. 199, 82 L. Ed. 276; *Arkansas Louisiana Gas Co.* v. *Department of Public Utilities*, 304 U. S. 61, 58 S. Ct. 770, 82 L. Ed. 1149."

This restriction is also evidenced in the Circuit Court of Appeal's two-paragraph memorandum order when it noted that (119 F. (2d) at 417, 418):

> "* * * it clearly appears that appellee is engaged solely in interstate commerce; that its interstate pipe lines from which gas is wholesaled under high pressure to distributing companies and utilities, is an interstate facility through which gas flows into Kentucky from other states, * * *."

Applicant also cites, at page 52, the case of *People ex rel. N. Y. C. R. Co.* v. *Public Service Comm.*, 233 N. Y. 113, 135 N. E. 195, where facts very similar to those in the *Alabama & Vicksburg Ry. Co.* case were presented. The New York Court, in holding that the State Commission was without power to order interstate carriers to construct facilities for the interchange of traffic between the two interstate lines, avoided any attempted to regulate intrastate or local switching when it noted, at page 2 that:

> "The track ordered to be constructed was not a spur, industrial, team, switching or side track, * * *."

Appellant then cites *Erie R. R. Co.* v. *N. Y.*, 233 U. S. 671, 58 L. Ed. 1149, where Congress had, by the Hours of Service Act, expressly regulated the hours of service of employees of interstate railroads. Not only did the Congress have the power to regulate such interstate roads but it was obvious that it intended that no State should thereafter regulate in this field.

The case of *Chicago,, R. I. & P. R. Co.* v. *Hardwicke, Farmers Elev. Co.*, 226 U. S. 426, 57 L. Ed. 284, cited at pages 53 and 54, and *Missouri Pacific R. Co.* v. *Stroud*, 267 U. S. 404, 59 L. Ed. 683, cited at page 55, both dealing with attempts by States to regulate the furnishing of cars for the handling of interstate shipments, are to be distinguished in the same manner.

At pages 57 and 58, Appellant quotes at length from a certain resolution adopted by the National Association of Railroad and Utilities Commissions. As we have pointed out heretofore the resolution referred to, far from sustaining Appellant's position, clearly demonstrates that our position is the only sound position possible in view of the background and language of the Act.

We submit that none of the above authorities are such as to sustain Appellant's contentions in the case at bar.

Much of Appellant's argument under Point IV consists of repeated assertions to the effect that the Appellant will be forced to serve two masters with respect to the same subject matter, that action by the Federal Power Commission must necessarily be repugnant to and exclude any action by the State Commissions, that the order of the Illinois Commission will result in the Appellant's extending its gas into fields already occupied by other natural gas companies, etc.

All of these supposed difficulties are conjured up by Appellant's basic premise that the transmission of natural gas from the wells to the ultimate consumers must be treated as one single subject matter and cannot be broken down into its interstate and intrastate elements. As heretofore demonstrated this initial premise is false.

If the transmission of gas is divided into its interstate and intrastate elements, there is no conflict. The Federal Power Commission, under the Act, is in complete charge of the great interstate pipe lines and determines into which states of the Union such interstate lines shall be extended and the prices to be charged by these carriers. Once such interstate pipe lines have delivered their gas to the local intrastate companies, for redistribution wholly within such states, however, the power of the Federal Commission is at an end.

From that point on the local State Commissions take over the work of determining to whom, and at what rates, the local companies shall redistribute such gas.

So viewed there is no conflict. A careful examination of the Natural Gas Act, as we have said, plainly discloses that such a division of power was intended and provided for.

This view of the subject seems eminently fair and reasonable to us. The Federal Commission is well equipped to judge which of the states should have interstate gas piped to them but the local State Commission's are, we submit, best suited to determine the local recipients of such gas and the price to be paid for it as resold locally.

Appellant's argument that economically undesirable competition between gas companies may result from State regulation is not sound. Illinois, for example, now produces considerable quantities of natural gas locally and this locally produced gas is subject to the control of the Illinois Commission and not of the Federal Commission. Thus the Illinois Commission has, in fact, a far better opportunity to understand and properly regulate the local distribution of gas in Illinois than has the Federal Commission and is in a far better position to avoid ruinous competition among gas companies.

Concluding our argument under this point, we submit that the order in question is not only not repugnant to or in conflict with the Natural Gas Act but that if the transmission of natural gas from the wells to the ultimate consumers is supervised and controlled in part by the Federal Commission and in part by the various State Commissions, as is expressly provided for under the said Act, the welfare of the nation will be best served.

We submit that so viewed the control of the Panhandle Eastern Pipe Line Company, in the case at bar, should

rest in the hands of the Federal Power Commission, and that the control of the activities of the Illinois Natural Gas Company, subsequent to its receipt of the gas from the Panhandle Eastern, should remain in the Illinois Commerce Commission, where it has heretofore been.

Conclusion.

In view of the above we respectfully submit that the transmission of natural gas from the wells in the Texas Panhandle to the ultimate consumers in Central Illinois need not be treated as one continuous transaction; that the interstate character of this transmission terminates upon the delivery of such gas to the appellant within the State of Illinois; that Appellant's subsequent activities, in selling and delivering this gas to consumers wholly within the State of Illinois, do not constitute interstate commerce; that over such activities the Illinois Commerce Commission, under the Illinois statute, has jurisdiction; that such an order as was here entered is not repugnant to or in conflict with the commerce clause of the Federal Constitution or the Federal Natural Gas Act; that the order in question would even be proper under the provisions of the Natural Gas Act which provides for Federal control of such activities as are carried on in the case at bar by the Panhandle Eastern Pipe Line Company and for state control of such activities as are carried on in the case at bar by the Appellant, Illinois Natural Gas Company; and that such combined Federal control of the large interstate pipe lines and State control of the local distribution of such gas is for the best interests of the Nation in that each of such separate subject matters would be under the control of that body best equipped properly to determine the matters coming within its own peculiar jurisdiction.

We, therefore, respectfully pray that the judgment of the court below be in all respects affirmed.

Respectfully submitted,

GEORGE F. BARRETT,
Attorney General of the State of Illinois,
Counsel for Illinois Commerce Commission, an Appellee,

A. D. STEVENS,
GRAY HERNDON,
ELMER NAFZIGER,
Counsel for Central Illinois Public Service Company, an Appellee.

ALBERT E. HALLETT,
Assistant Attorney General,
of Counsel.